

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

TYRONE LEE FUTRELL, SR.,

Plaintiff,

vs.

IMPERIAL SECURITY,

Defendant.

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No. 3:13CV00140 SWW

Memorandum and Order

Plaintiff filed an application to proceed *in forma pauperis* in a Title VII complaint.

There is a two-step process to be followed by the district court in considering whether a *pro se* plaintiff should be permitted to proceed *in forma pauperis*. *Martin-Trigona v. Stewart*, 691 F.2d 856 (8th Cir. 1982). First there is a determination of whether the plaintiff qualifies by economic status under 28 U.S.C. § 1915(a). If he does, the complaint is permitted to be filed. *Id.* Second, assuming the allegation of poverty is not untrue, a determination is made under § 1915(e)(2)(B) of whether the cause of action stated in the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. If so, the complaint is to be dismissed. Because it appears that plaintiff's economic situation qualifies him for *in forma pauperis* status, the Court hereby grants plaintiff's application to so proceed [docket entry 1].

The Court next determines whether, pursuant to § 1915(e)(2)(B), this action should be dismissed because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. Plaintiff

brings his complaint pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et al.* He fails to attach to his complaint a copy of the charge of discrimination he filed with the Equal Employment Opportunity Commission (“EEOC”) on May 28, 2013. He complains that even though he has applied for jobs with the defendant, he has never been called on the phone or had an interview. He states he has both an Associate and Bachelor Degree.

Title VII makes it unlawful for an employer to fail or refuse to hire an individual because of his race, color, sex, religion, or national origin. 42 U.S.C. § 2000e-2(a)(1). Plaintiff makes no allegation that defendant failed to hire him because of unlawful discrimination. Acknowledging that *sua sponte* dismissals are expressly disfavored, *Nash v. Black*, 781 F.2d 665 (8th Cir. 1986), the Court nevertheless is satisfied that this complaint should be dismissed because it fails to state a claim on which relief may be granted.

SO ORDERED this 6th day of June, 2013.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE